



**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	
Southwestern Bell Communications Services,	)	CC Docket No. 01-88
Inc. d/b/a Southwestern Bell Long Distance for	)	
Provision of In-Region, InterLATA Services in	)	
Missouri	)	

**REPLY AFFIDAVIT OF WILLIAM R. DYSART**

<b>STATE OF MISSOURI</b>	)	
	)	
<b>COUNTY OF ST. LOUIS</b>	)	

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I, William R. Dysart, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. My name is William R. Dysart. I previously filed an affidavit ("Initial Dysart Affidavit") on behalf of Southwestern Bell Telephone Company ("SWBT") in this proceeding.<sup>1</sup>

**PURPOSE AND SCOPE OF AFFIDAVIT.**

2. The purpose of my affidavit is to reply to the comments of AT&T,<sup>2</sup> El Paso/PacWest,<sup>3</sup> McLeodUSA,<sup>4</sup> NALA/PCA,<sup>5</sup> and NuVox<sup>6</sup> regarding SWBT's wholesale performance data and SWBT's Missouri Performance Remedy Plan. These commenters make various claims that SWBT's performance for Missouri competitive local exchange carriers ("CLECs") has been inadequate with respect to checklist item (ii), regarding access to network elements – Operations Support Systems ("OSS"), and checklist item (iv), regarding unbundled local loops.<sup>7</sup> However, these claims are unsupported by proper analysis of SWBT's performance results. My affidavit also replies to AT&T's claim regarding SWBT's implementation of PM 13 (Order Process Percent Flow Through). Additionally, my affidavit addresses the criticisms

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<sup>1</sup> Dysart Affidavit attached to *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Missouri*, CC Docket No. 01-88 (FCC filed Apr. 4, 2001) ("Initial Dysart Affidavit").

<sup>2</sup> Comments of AT&T Corp., CC Docket No. 01-88 (FCC filed Apr. 24, 2001) ("AT&T Comments"); Declaration of Walter W. Willard attached to AT&T Comments as Appendix D ("Willard Declaration").

<sup>3</sup> Comments of El Paso Networks, LLC and PacWest Telecom, Inc., CC Docket 01-88 (FCC filed Apr. 24, 2001) ("El Paso/PacWest Comments").

<sup>4</sup> Comments of McLeodUSA, Inc., CC Docket No. 01-88 (FCC filed Apr. 24, 2001) ("McLeodUSA Comments").

<sup>5</sup> Comments of National ALEC Association/Prepaid Communications Association, CC Docket No. 01-88 (FCC filed Apr. 24, 2001) ("NALA/PCA Comments").

<sup>6</sup> Comments of NuVox, Inc. (FCC filed April 24, 2001) ("NuVox Comments").

<sup>7</sup> My affidavit also responds to the Evaluation of the United States Department of Justice regarding SWBT's DS1 performance. Evaluation of the United States Department of Justice, CC Docket No. 01-88 (FCC filed May 9, 2001) ("DOJ's Evaluation").

advanced by McLeodUSA regarding SWBT's Missouri Performance Remedy Plan – a plan based upon the Texas, Kansas and Oklahoma Performance Remedy Plans approved by the Federal Communications Commission (“FCC” or “Commission”). Finally, my affidavit demonstrates that SWBT's performance measurements data and processes are reliable, despite AT&T's misplaced criticisms of the audit performed by Ernst & Young, L.L.P. (“E&Y”).

**SWBT CONTINUES TO PROVIDE STRONG WHOLESALE PERFORMANCE TO  
MISSOURI CLECS.**

3. The various CLEC commenters focus on performance data for a very limited number of measurements. Their analysis of the data for these discrete measures is incorrect. Their general approach is also incorrect because it completely ignores the fact that SWBT's data reflect that SWBT continues to provide Missouri CLECs with strong overall wholesale performance. In fact, it cannot be denied that SWBT has maintained high performance levels over the past three months in Missouri. SWBT's performance measurement data for Missouri during the most recent three-month period (January - March 2001) are presented in Attachment A. This attachment also includes the results of statistical tests determining whether the data in each measurement category demonstrate parity performance (or achievement of a benchmark standard). Further evidence demonstrating SWBT's Missouri performance is included in Attachment B, the performance measurement tracking report that SWBT provides to the Department of Justice (“DOJ”) each month.

4. SWBT's performance in Missouri during this most recent period compares favorably to the results reported in my initial affidavit for this proceeding. SWBT's performance met or surpassed the applicable performance standards for 89.9%, or 267 of the 297 performance

measures, having ten or more data points during at least two of the last three months (January - March 2001). SWBT also met or surpassed the applicable performance standards for 92.3% (168 of 182) of Tier 2 measures and 92.3% (191 of 207) of Tier 1 and/or Tier 2 measures in at least two of the last three months. Thus, SWBT continues to provide Missouri CLECs strong wholesale performance that provides them a meaningful opportunity to compete in the Missouri local exchange market.

**THE COMMISSION SHOULD REJECT THE CLECS' CLAIMS  
THAT INDIVIDUAL PERFORMANCE SHORTCOMINGS INDICATE  
DISCRIMINATORY WHOLESALE PERFORMANCE BY SWBT.**

5. Several commenters allege that SWBT is providing deficient service to the CLECs in Missouri. However, these parties generally rely on incomplete or dated information (e.g., El Paso/PacWest's reliance on data for the summer of 2000)<sup>8</sup> or draw inferences not warranted by the data and other considerations pertinent to SWBT's performance. In addition, McLeodUSA, NuVox, and El Paso/PacWest fail to raise any material issues regarding SWBT's Missouri wholesale performance.

6. As discussed above, SWBT's overall performance remains strong. Further, as demonstrated below, performance results for the limited number of measures emphasized by the CLECs do not indicate that the CLECs have been denied a meaningful opportunity to compete in Missouri. The Commission should reject claims that a few performance faults are indicative of a systemic problem that hampers the ability of CLECs to compete in Missouri.

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<sup>8</sup> El Paso/PacWest Comments at 15.

**NUVOX VASTLY UNDERSTATES SWBT'S DSL PROVISIONING PERFORMANCE.**

7. NuVox alleges that SWBT's "on time performance in delivering DS1 loops has been persistently poor in Missouri, particularly in the largest market area in the state – St. Louis."<sup>9</sup> This claim does not fairly portray SWBT's DS1 provisioning performance, because it is based solely on a faulty analysis of the results for one measure (PM 58-06, Percent SWBT Caused Missed Due Dates – DS1 loop). NuVox also fails to mention the performance results for other measurements and other aspects of SWBT's DS1 performance that warrant consideration.

8. Contrary to NuVox's St. Louis area claim, SWBT continues to provide parity performance in both the Kansas City and St. Louis market areas. As shown in Attachment E, SWBT has achieved parity for PM 58-06 during each of the last six months in Kansas City and during each of the past twelve months in St. Louis. If data were removed for the two months in which a parity comparison could not be made in the Kansas City area (i.e., June and September 2000), SWBT would have failed to achieve parity only once during the remaining ten of the last twelve months in that area. Viewing Missouri as a whole, SWBT's performance data support the fact that as a statistical matter, SWBT has provided Missouri CLECs parity performance for DS1 installation during every month in the last year except August 2000.

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<sup>9</sup> NuVox Comments at 12. NuVox states that it made a written request to SBC's Account Team for an analysis of SWBT's DS1 provisioning performance, that SBC committed to provide a written response, and that NuVox has yet to receive a response. NuVox Comments at 14 & n. 48. I interpreted these comments not as requesting a reconciliation of SWBT's and NuVox's performance data, but rather, as requesting an explanation addressing NuVox's view that SWBT had failed to deliver DS1 circuits to NuVox on a timely basis. The responsible SWBT Account Manager has confirmed to me that she had multiple discussions with NuVox regarding this subject since at least December 2000, that she had assembled the information responsive to NuVox's request, and that she believes she e-mailed the information to NuVox on March 13. The Account Manager has further confirmed that on May 15 she conveyed to NuVox once again the information she believes she sent on March 13 and will confirm its receipt by contacting the NuVox Executive Director, Regulatory and Public Affairs.

9. Additionally, NuVox fails to give SWBT any credit for meeting its commitment to improve DS1 provisioning performance. Specifically, it fails to acknowledge the steadily improving performance results for PM 58-06 that have resulted from the provisioning initiatives outlined in the Reply Affidavit of Bill VanDeBerghe. These improvements demonstrate that SWBT's initiatives have taken firm hold and are working. First, since November 2000, SWBT's DS1 missed due date percentage for Missouri CLECs has been reduced by over half, from 43.0% to 17.4%. Second, each month's performance during the period has shown improvement over the prior month's performance (November – 43.0%; December – 35.0%; January – 32.2%; February – 20.2%; March – 17.4%). Third, during each month the relative difference in SWBT's performance for CLECs as compared to SWBT's retail operations has likewise narrowed. According to the most recent results available, SWBT's PM 58-06 performance for CLECs (17.4% for March) is virtually the same as for SWBT's retail operations (16.7% for March).<sup>10</sup>

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<sup>10</sup> The DOJ's Evaluation relies on performance data for PM 58-06 in noting that "during the past three months [SWBT] has missed, on average, nearly one quarter of installation commitments for CLECs." DOJ's Evaluation at n. 23. However, this first quarter 2001 performance snapshot fails to recognize the more detailed statistical evidence of SWBT's improved DS1 performance noted above. Moreover, the DOJ's conclusion that there has been "some improvement" in performance is overly conservative when that performance is considered on a quarter over quarter basis. Data for PM 58-06 reflect that SWBT's first quarter 2001 performance improved despite volumes significantly greater than the fourth quarter 2000. Specifically, although volumes jumped 52% (258 vs. 393) from one quarter to the next, the missed due date rate dropped from 38.3% to 23.26%. Given these data, it would be more accurate to say that SWBT's first quarter 2001 installation commitment performance vastly improved over that of the previous quarter. Further, the data for PM 58-06 reflect that SWBT has fallen short of parity only once (August, 2000) during the last twelve months.

With regard to data for PM 62-06, the DOJ's Evaluation observes that in one month (March 2001), average delay days caused by missed due dates for CLECs were four times as long as those for SWBT's retail customers. *Id.* However, no weight should be attached to this single month's performance, notwithstanding that the data reflect a 4.81 average delay day interval for CLECs and a 1.00 average delay day interval for SWBT's retail operations. The "1.00" average is owed entirely to a single day delay attributable to a single order; thus, no statistically meaningful inference is permitted by the March data. Moreover, except for the March "shortfall" and another in January, 2001 (in which the 5.50 average delay day interval for SWBT's retail operations was attributable to but two orders), SWBT has achieved parity for all other months from April, 2000 through March, 2001. In addition, over this twelve-month period, the delay days encountered by Missouri CLECs have been, on average, only 8.2 days, as compared to 11.4 days for SWBT's retail operations. Consequently, Missouri CLECs have received better overall



10. Similar inferences – vastly improved missed due date performance and a declining difference in relative performance levels – are indicated by comparisons to SWBT’s provisioning of retail DS1 access services. SWBT’s missed due date percentages for its retail (access) DS1 services have declined from 36.0% in December to 23.0% in January, to 16.7% in February, to 15.1% in March.<sup>11</sup> The relative difference between wholesale DS1 performance and retail access service performance narrowed to just 2.3% (i.e., 17.4% for CLECs, as noted above, as compared to 15.1% for SWBT).

11. NuVox’s emphasis on SWBT’s “percent missed due date” results also fails to take into account the results of other pertinent DS1 measurements.<sup>12</sup> For example, SWBT’s performance relative to DS1 “average installation intervals” is noteworthy. The data reflect that SWBT provides DS1 loops to Missouri CLECs far more quickly than it provides DS1 service to its own retail operations. The data for PM 55-04 (Average Installation Interval – DS1) show that SWBT has averaged 5.0 days to provision DS1 loops to CLECs during the last twelve months (April 2000 - March 2001). Yet, the data for PM 43-04 (Average Installation Interval – DS1 Specials) indicate that SWBT generally requires an average of 14.2 days to provision DS1

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performance relative to PM 62-06 than has SWBT’s retail operations.

<sup>11</sup> The percentages for the period December - February reflect restated data provided to me recently, after the preparation and filing of my earlier affidavit. In that affidavit, I reported that the missed due date percentages for SWBT’s DS1 retail (access) services (i.e., “SWBT Including Access”) were 37.9% for December, 29.7% for January and 20.4% for February. Initial Dysart Affidavit n. 53. Based on that inaccurate data, I concluded that the missed due date percentages for CLECs and for SWBT during the three-month period were nearly the same. *Id.* ¶ 108. While the restated data show marked improvement in performance for CLECs over the last four months, the relative due date percentages are nearly the same only with respect to March data. In addition, I reported that 71% of CLEC DS1 services are requested within 5 days, as compared to 14% of SWBT retail access operations’ requests. *Id.* ¶ 109. Restated data provided to me recently show that 66% of CLEC DS1 requests are within 5 days, as compared to 19.6% of SWBT’s retail access requests.

<sup>12</sup> As the FCC has noted, “a disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist.” *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, FCC 01-29, CC Docket No. 00-217, ¶ 32 (rel. Jan. 22, 2001) (“*SBC Kansas/Oklahoma Order*”).

service for its own retail operations.<sup>13</sup> This interval is roughly three times as long as the interval encountered by CLECs.<sup>14</sup>

12. In addition, NuVox overlooks that the DS1 loops provisioned for Missouri CLECs are of the same quality as the circuits that SWBT provides its retail customers. For example, SWBT has achieved parity for PM 59-05 (Percent Installation Reports (Trouble Reports) Within 30 Days (I-30) of Installation – DS1 Loop) during each of the last twelve months in Missouri (April 2000 - March 2001). Likewise, the twelve month average trouble report rate of 3.5% experienced by CLECs is less than the 3.8% trouble report rate experienced by SWBT's retail operations, as indicated by the results for PM 65-05 (Trouble Report Rate – DS1 Loop with Test Access). Finally, the twelve month average repeat report rate experienced by CLECs (14.3%) is less than that experienced by SWBT's retail operations (17.3%), according to the results for PM 69-05 (Percent Repeat Reports – DS1 Loop with Test Access).<sup>15</sup>

13. The foregoing data thus demonstrate that Missouri CLECs are afforded nondiscriminatory access to DS1 loop provisioning, maintenance and repair services. However,

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<sup>13</sup> For the reasons I explained in my earlier affidavit, SWBT's difficulties in meeting a "standard offered interval" of three days, reflected in the data for PM 55-04 as well as the data for PM 56-04 (Percent Installations Completed Within the Customer Requested Due Date – DS1) do not reflect SWBT's true wholesale performance. SWBT does not offer its retail customers any standard interval, and in the majority of cases retail installation requests call for provisioning intervals exceeding three days. Initial Dysart Affidavit n. 51.

<sup>14</sup> El Paso/PacWest raises many of these same DS1 issues as NuVox using the aggregate data provided by SWBT. PM 56-04.1 was raised as not meeting benchmark performance. El Paso/PacWest Comments at 23-24. This measurement is diagnostic with the more appropriate measurement being PM 58-06, which is described above. For the same reasons as described above these claims should be dismissed.

<sup>15</sup> According to the DOJ's Evaluation, SWBT's performance for PM 69-05 "has deteriorated." DOJ's Evaluation n. 23. However, the DOJ fails to point out that, over the last three months whose data the DOJ relies on, the SWBT repeat report data sample (20) has been far smaller than that of the CLECs (135), making a valid statistical comparison less reliable than had a larger retail data sample been presented. The DOJ also fails to acknowledge that SWBT has achieved statistical parity for this measurement in each of the last twelve months and that, as noted above, the twelve-month 14.3% repeat report rate for Missouri CLECs has been less the 17.3% repeat report rate for SWBT's retail operations.

a key consideration even beyond statistical data leads to the same conclusion. NuVox does not provide any evidence that SWBT's performance has resulted in "lost business" for NuVox or that SWBT's performance has otherwise denied NuVox a meaningful opportunity to compete.<sup>16</sup> Indeed, while NuVox speaks only broadly about an unfavorable "general" perception that customers may have regarding the competence of CLECs, still NuVox concedes that it has not been specifically harmed, admitting instead that "[i]n any particular instance, a sale may not be lost."<sup>17</sup>

14. Based upon the foregoing statistical and other considerations, the Commission should find that NuVox's claims fail for lack of evidence to support them. The Commission instead should conclude that NuVox and other Missouri CLECs have been provided a meaningful opportunity to compete in the Missouri DS1 service market.<sup>18</sup>

**MCLEODUSA AND EL PASO/PACWEST RELY ON DATED PERFORMANCE RESULTS AND GIVE MISLEADING CONCLUSIONS.**

15. McLeodUSA attempts to disparage SWBT's performance by relying on data over six months old, instead of analyzing either the data presented in my earlier affidavit or the March

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<sup>16</sup> *SBC Kansas/Oklahoma Order* ¶ 189.

<sup>17</sup> NuVox Comments at 13.

<sup>18</sup> The FCC should also conclude that any disparities in SWBT's DS1 provisioning performance should not lead to a finding of noncompliance with checklist item (iv), particularly given the relatively small number of loops provisioned in Missouri. See, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts* Memorandum Opinion and Order, FCC 01-130, CC Docket No. 01-29, n. 495 (rel. April 16, 2001) ("*Verizon Massachusetts Order*") ("Although we recognize specific performance problems for high capacity loops, we do not find that these disparities in and of themselves are enough to render a finding of checklist noncompliance because of the small numbers of DS-1 loops requested by competing carriers.")

performance data SWBT made available thereafter. El Paso/PacWest similarly relies on data generated many months ago, and fails to properly analyze the results for other measures.<sup>19</sup>

16. Preliminarily, it should be noted that a more thorough analysis by these CLECs would have indicated that SWBT's performance remains strong overall. As I noted earlier in my affidavit, SWBT has met 89.9% two out of three months for the most current three-month period, 92.3% for Tier 2 and 92.3% for Tier 1 and Tier 2 combined.

17. Apart from the overall data overlooked by these CLECs, the following provides updated performance for each of the Version 1.7 performance measurements listed by McLeodUSA:

- PM 1-12 (Average Response Time For OSS Pre-Order Interfaces – DataGate – EDI Protocol Translation Time) – This measurement is diagnostic and benchmarks were deemed interim until all parties agreed that sufficient data were available to set final benchmarks. McLeodUSA provides no evidence that response times within a matter of seconds deny it a meaningful opportunity to compete.
- PM 2-08 (Average Response Time For OSS Pre-Order Interfaces – DataGate – Average Loop Makeup – Actual Data Returned) – This measurement is likewise diagnostic. Benchmarks were deemed interim until all parties agreed that sufficient data were available to set final benchmarks. Once again, McLeodUSA provides no evidence that response times within a matter of seconds deny it a meaningful opportunity to compete.<sup>20</sup>
- PM 2-16 (Average Response Time For OSS Pre-Order Interfaces – Verigate – Dispatch Required) – SWBT has met this benchmark for each of the last five months.

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<sup>19</sup> McLeodUSA Comments at 23, 38-39; El Paso/PacWest Comments at 15, 20.

<sup>20</sup> One would engage in a similarly faulty analysis were he or she to conclude that SWBT has denied Missouri CLECs a meaningful opportunity to compete on the basis of shortfalls in SWBT's performance results for measurements related to PM 2-08, PM 1-09 (Average Response Time For OSS Pre-Order Interfaces – DataGate), PM 1-24 (Average Response Time For OSS Pre-Order Interfaces - Verigate) and PM 2-18 (Percent Responses Received within "X" Seconds – OSS Interfaces – Verigate). All of the benchmarks instituted for these measurements, like the benchmark for PM 2-08, were deemed interim until all parties agreed that sufficient data were available to set final benchmarks. The performance results for these measurements, like those of PM 2-08, indicate that response times remain within a matter of seconds. No CLEC demonstrates that its competitive efforts have been hindered by such performance.

- PM 7.1-01 (Percent Completions Returned within 1 Day of Work Completion – LEX) – SWBT has met the benchmark in each of the last four months. Over the last 12 months, SWBT’s performance has averaged 97.1%, above the 97% benchmark.
- PM 7.1-02 (Percent Completions Returned within 1 Day of Work Completion – EDI) – SWBT has met the benchmark in three of the last four months. The March shortfall resulted in performance of 96.4%, only 0.6% below the 97% benchmark.
- PM 10.1-01 (Percent Manual Rejects Received Electronically and Returned in “X” hours) – SWBT has met the 97% benchmark in each of the last five months.
- PM 10.2-02 (Percentage of Orders that Receive SWBT Caused Jeopardy Notifications) – SWBT has averaged 1.2% since October 2000 (the first month of reporting). This measurement is diagnostic and no benchmark was established. McLeodUSA provides no evidence that facilities jeopardies hovering just above the 1% mark deny it a meaningful opportunity to compete.
- PM 13-02 (Order Process Percentage Flow Through – LEX) – Although SWBT’s performance has not been at parity with EASE, CLECs’ individual LEX flow through rates vary, and CLECs that place a larger number of orders generally attain better flow through rates. Moreover, SWBT relies on its EDI interface in its 271 application, and the Commission places more weight on EDI flow through results than on LEX flow through results.<sup>21</sup> EDI performance has been outstanding, with SWBT having provided parity performance over the last 12 months. Because McLeodUSA provides no evidence of “significant competitive impact” relative to SWBT’s performance for this measurement, its criticism of SWBT’s performance should be dismissed.<sup>22</sup>
- PMs 28-07, 28-08, 28-09, 28-10 (% POTS/UNE-P Installations Confirmed within the Customer Requested Due Dates) – These measurements are diagnostic with no established performance standards. McLeodUSA provides no evidence that SWBT’s performance has had any adverse affect on its ability to compete.
- PM 29-03 (Percent SWBT Caused Missed Due Dates – Residence – NFW) – SWBT has achieved parity performance in each of the last five months.
- PM 29-06 (Percent SWBT Caused Missed Due Dates – UNE-P – NFW) – Although SWBT has been unable to achieve parity, its performance has been outstanding. SWBT has only missed 0.83% of the CLECs’ due dates over the last 12 months. Given this outstanding performance, the less than 0.5% difference as compared to performance for SWBT’s retail operations (0.37%) likely did not hinder McLeodUSA’s ability to compete, and McLeodUSA does not claim otherwise.
- PM 35-12 (Percent Trouble Reports on C Orders within 10 Days – UNE-P – NFW) – SWBT has provided Missouri CLECs parity performance in each of the last five months.

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<sup>21</sup> *SBC Kansas/Oklahoma Order* ¶ 146.

<sup>22</sup> *Id.* The same applies to El Paso/PacWest, which criticizes SWBT’s LEX flow through performance without identifying any competitive impacts. El Paso/PacWest Comments at 17.

- PM 38-05 (Missed Repair Commitments – UNE-P Dispatch) – SWBT has identified two issues regarding its performance on this measurement, and has implemented corrective action that should have a positive impact on PM 38-05. First, toolbar tickets were being submitted to the wrong LMOS bucket from the CSB. Whenever a CLEC ticket does not autoflow to Dispatch Out (“DPO”) or Dispatch In (“DPI”), the ticket falls out for manual handling and retesting at the CSB. Once identified as a CLEC ticket, the trouble ticket is screened to TSM 200 if it is line share or TSM 900 for POTS. Since the conversion of LMOS to WFA, the CSB should no longer screen tickets to TSM 200, however tickets were being sent to this bucket. This has been corrected. Secondly, the use of “\*C” for subsequent reports was not being utilized properly by all customer service representatives (“CSRs”) in the Call Center. The downstream legacy systems key off of “\*C [space]” to recognize that a commitment time has changed. SWBT’s investigation uncovered that most of the commitments were actually met, but that the system didn’t recognize that a commitment date was changed; therefore, a miss was coded to SWBT. Additional training has been provided to the CSRs to correct this error. In any event, the relative difference in SWBT’s performance for CLECs, as compared to that provided its retail operations, has been slight during the last three months (January – 2.10%; February – 0.74%; and March – 2.65%). Absent evidence of adverse competitive impact – and McLeodUSA provides none – the Commission is entitled to conclude that SWBT’s performance does not deny any Missouri CLEC a meaningful opportunity to compete.
- PM 43-07 (Average Installation Interval – ISDN-PRI) – SWBT has achieved parity performance in two of the last three months, and the 12-month average interval of 11.91 days for Missouri CLECs is about half the average interval of 22.29 days encountered by SWBT’s retail operations.
- PM 58-09 (Percent SWBT Caused Missed Due Dates – DSL – No Line Sharing) – SWBT has provided far better than benchmark performance (5%) in each of the last three months (January – 1.7%; February – 0.9%; and March – 1.3%).
- PM 59-08 (Percent Trouble Reports on N, T, C orders within 30 days) – SWBT’s performance has averaged 5.8% over the last three months, less than the 6% benchmark. In March 2001, SWBT’s 6.05% performance effectively met the benchmark, but was recorded as a miss because under the benchmark requirements stated for PM 59 no critical z value is applied to data for non-line shared DSL loops. Moreover, McLeodUSA does not address other pertinent considerations identified in my earlier affidavit, including the fact that SWBT’s performance is comparable to that approved in the *SBC Kansas/Oklahoma Order*.<sup>23</sup>

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<sup>23</sup> Initial Dysart Affidavit ¶ 72. It is also important to note that data for PM 59-08 includes instances in which the CLECs have failed to participate in available acceptance testing. That circumstance warrants consideration because “properly conducted acceptance testing could identify some installation quality problems that would be resolved at the time the competitive LEC and [ILEC] conduct the acceptance test.” *Verizon Massachusetts Order* ¶ 144. The Reply Affidavit of Bill VanDeBerghe discusses in more detail the availability of such testing to Missouri CLECs.

- PM 60-03 (Percent Missed Due Dates Due to Lack of Facilities – BRI Loop) – SWBT has achieved parity performance in each of the last four months, during which SWBT missed only 10 of 499 orders (i.e., just 2%).
- PM 62-09 (Average Delay Days for SWBT Missed Due Dates – DSL – No Line Sharing) – SWBT’s performance has been well under the 6% benchmark in each of the last four months.
- PM 65-08 (Trouble Report Rate – DSL – No Line Sharing) – SWBT’s performance has been well within the 3% benchmark in each of the last five months.

18. Elsewhere, McLeodUSA cites SWBT’s performance for PM 73-01 (Percentage of Installations Completed Within the Customer Requested Due Date).<sup>24</sup> However, McLeodUSA’s criticism are dated and do not address any of the multiple points made in my earlier affidavit which are pertinent to this subject.<sup>25</sup> In addition, this allegation by McLeodUSA does not account for the latest average result for PM 73-01 (January - March 2001) of 94.4%. This completion ratio for Missouri CLECs is far better than the percentage of missed appointments encountered by SWBT’s retail operations. The individual market area performance rates are also similar to the statewide results during the last three months. The Kansas City market area has achieved an 89.5% rate for PM 73-01, while the St. Louis results were 95.5%.

19. As is apparent from the most recent performance measurement data, all of which McLeodUSA chose to ignore, SWBT’s performance has improved since the initial comments made by the Missouri Staff. Given the obvious passage of time, it causes one to wonder whether this CLEC recognized SWBT’s outstanding performance and instead deliberately chose to utilize outdated data to support a desired but erroneous conclusion. Alternatively, McLeodUSA decided to write its comments without checking the more recent performance

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<sup>24</sup> McLeodUSA Comments at 23.

<sup>25</sup> Initial Dysart Affidavit ¶¶ 40-42

results that would be of greater interest to the Commission. In either case, the FCC should disregard all of McLeodUSA's performance-related criticisms.

20. As noted, El Paso/PacWest also refers to performance results prior to SWBT's 271 application in Missouri.<sup>26</sup> In particular, El Paso/PacWest notes the overall performance measurement success ratio achieved by SWBT from August through October 2000. In addition, El Paso/PacWest also mentions the performance measures that SWBT missed two or more times during the period from June through August 2000.<sup>27</sup> These observations have no relevance to SWBT's more recent performance and provide the Commission with nothing helpful in the way of assessing the more current and meaningful performance.

21. As mentioned above, SWBT has achieved solid performance for Missouri CLECs on an overall basis. Although SWBT strives for excellence in providing service to all of its wholesale and retail customers, it should be expected that some of SWBT's performance will fall short relative to at least some measures during a given period due to random variation. Indeed, this variability is recognized and accounted for in the performance remedy plan (e.g., the use of the k table and a critical value). In addition, the CLECs and/or the State Treasury is compensated whenever a continuing performance problems exists in Missouri. Notably, El Paso/PacWest does not claim, much less demonstrate, that its competitive efforts in Missouri have been hindered in any way by SWBT's overall wholesale performance.

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<sup>26</sup> El Paso/PacWest Comments at 15, 20.

<sup>27</sup> *Id.* at 15.



22. El Paso/PacWest cites outdated results for PM 5-18 (Percent Firm Order Confirmations (FOCs) Returned On Time For LSR Requests – UNE Loops (1-49 Loops)).<sup>28</sup> The most recent data reflect that SWBT has met the benchmark two out of the last three months (January - March 2001). SWBT missed the 95% benchmark in February by just 0.5% (94.5%). Furthermore, since October 2000, SWBT has returned 96.8% of the FOCs for this measurement in a timely manner. Clearly, El Paso/PacWest's reliance on outdated results is misplaced.

23. Likewise, El Paso/PacWest cited dated results for PM 10.1-01 (Percent Manual Rejects Received Electronically and Returned Within X Hours – LEX/EDI).<sup>29</sup> Although this commenter offered the insight that SWBT failed this measure during the period from January through October 2000, it neglects to mention that SWBT's performance has been well within the "97% within 6 hours" benchmark in each of the more relevant five months from November 2000 through March 2001. El Paso/PacWest's claim that CLECs are having difficulty receiving timely reject notices is without any support in the pertinent performance data.

24. El Paso/PacWest also mentions "problems in regard to billing," based on its observation that SWBT has missed PM 17-01 (Billing Completeness) during twelve out of the sixteen months ended in December 2000.<sup>30</sup> This dated information is irrelevant to this proceeding. SWBT's performance for Missouri CLECs has exceeded its performance for SWBT's retail operations in each of the last three months. In addition, in my earlier affidavit, I described the unique statistical factors which adversely affect this measure.<sup>31</sup> The fact remains

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<sup>28</sup> *Id.* at 17.

<sup>29</sup> *Id.* at 18.

<sup>30</sup> *Id.* at 20.

<sup>31</sup> Initial Dysart Affidavit ¶ 176.

that the CLECs have received virtually the same level of billing completeness (97.8%) as SWBT (98.5%) over the last twelve month period; furthermore, they have received better service over the last three month period. This performance is comparable to that presented to the FCC when it approved SWBT's Texas 271 application.<sup>32</sup>

25. El Paso/PacWest portrays SWBT's explanation regarding its performance for PM 58-10 (Percentage of SWBT Caused Missed Due Dates – DSL – Line Sharing) as being inadequate and questions SWBT's performance on PM 65-09 (Trouble Report Rate – DSL – Line Sharing).<sup>33</sup> SWBT's performance on PM 58-10 has been impacted by the assignment of miscellaneous equipment. As explained in the reply affidavit of Bill VanDeBerghe, root cause analysis has been completed and corrective action has been taken which, based on preliminary April results, has resulted in improved and parity performance. PM 65-09 is a diagnostic measurement with no damages or assessments applicable. The more appropriate measurement to consider is PM 65.1-09 (Trouble Report Rate – Net of Installation and Repeat Reports – DSL Line Sharing). Since first being reported in December 2000, SWBT has been in parity each month with only five trouble reports during that period.

26. El Paso/PacWest claims that SWBT has failed to achieve parity in several areas related to the provision of loops.<sup>34</sup> Specifically, the measurements mentioned by El Paso/PacWest are PM 28-06 (Percent Installation Within Customer Requested Due Date – No

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<sup>32</sup> *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18,354, 18541, n. 529 (2000) ("SBC Texas Order"). ("SWBT's data for the last five months indicate that it posts an average of 98.15 percent of competing carriers' orders within the correct billing period, compared to 98.95 percent of its own orders.")

<sup>33</sup> El Paso/PacWest Comments at 22.

<sup>34</sup> *Id.* at 22-24

Field Work – UNEs), PM 38-06 (Percent Missed Repair – UNEs – No Dispatch), PM 41-03 (Percentage Repeat Reports – UNEs), PM 60-08 (Percent Missed Due Dates Due to Lack of Facilities – DSL – No Line Sharing), and PM 56-03.1 (Percent Installed Within 3 Days – BRI Loops – 1-10 Loops). I will address each of these alleged misses.

27. PM 28-06 is a diagnostic measurement with no associated damages or assessments. The more appropriate measurement is PM 29-06 (Percent SWBT Caused Missed Due Dates – No Field Work – UNE). As I described above, SWBT's performance has been outstanding for PM 29-06, meeting 99.17% of the due dates for Missouri CLECs for the last 12 months. Even for PM 28-06, SWBT has timely provisioned 99.43% of the customers' requested due date. Clearly, El Paso/PacWest cannot claim that this level of performance does not provide them with a meaningful opportunity to compete.

28. SWBT's performance for PM 38-06 has achieved parity in eight of the last twelve months. SWBT missed only one repair commitment out of 26 in February 2001 and only two out of 44 in March 2001, causing both months to be statistically out of parity. Over the last twelve months SWBT has only missed nine repair commitments out of 308 trouble reports. Clearly, SWBT's performance provides CLECs a meaningful opportunity to compete.

29. SWBT's performance for PM 41-03 has achieved parity in eight out of the last twelve months. Over this period, SWBT has had a repeat report rate of 10.60% for CLECs and 9.65% for its retail customers. This slight difference does not hinder the CLECs ability to compete.

30. SWBT's performance for PM 60-08 has improved significantly over the past six months. In October 2000, SWBT missed 6.4% of the DSL – No Line Sharing due dates on account of lack of facilities. The March 2001 data indicate that SWBT only missed 0.9% of the

due dates due to lack of facilities. The assessment by El Paso/PacWest clearly must have been based on dated information.

31. SWBT's performance for PM 56-03.1 reflects that SWBT has met the benchmark two out of the last three months (January - March 2001), and its March performance was perfect (100%). In addition, this measurement is diagnostic, and the measurement more reflective of SWBT's performance is 58-04 (Percent SWBT Caused Missed Due Dates – BRI Loop). SWBT's performance for PM 58-04 has achieved parity for the last twelve months. Clearly, SWBT has provided Missouri CLECs with a meaningful opportunity to compete.

32. Finally, El Paso/PacWest claims that SWBT's hot cut performance has not been satisfactory.<sup>35</sup> SWBT's performance on PM 114-01/02 (Percent Premature Disconnects for CHC/FDT with Loop Lines) has been outstanding over the last twelve months. SWBT has met the benchmark for CHC ten out of the last twelve months and eleven out of the last twelve months for FDT. PM 114.1-01/02/03/04 (CHC/FDT LNP with Loop Provisioning Interval) is a diagnostic measurement in Version 1.7 of the business rules. However, SWBT's performance has been outstanding over the last eight months. The performance for PM 114.1-01 was 96.99%, PM 114.1-02 was 100%, PM 114.1-03 was 96.28%, and PM 114.1-04 was 100%. Likewise, PM 115 (Percent Provisioning Trouble Reports (PTR) CHC and FDT) is diagnostic, and results reflect outstanding performance. In the last six months, SWBT has had only two PTRs for CHS out of 1,484 conversions and only two for FDT out of 1,511. Clearly, SWBT's hot cut

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<sup>35</sup> *Id.* at 24-26.

performance has been outstanding. In sum, El Paso/PacWest raises another false issue in the hopes of delaying SWBT's entry in the Missouri long distance market.<sup>36</sup>

33. As noted in my initial affidavit, PM 1.2 (Accuracy of Actual Loop Makeup Information Provided for DSL Orders) was implemented in December 2000.<sup>37</sup> Although SWBT has failed to achieve parity during two out of the last three months in Missouri, Missouri CLECs were not denied a meaningful opportunity to compete. SWBT has accurately returned 99.3% of the CLEC's requests for loop makeup information since December 2000.

**NALA/PCA PROVIDE NO EVIDENCE TO SUPPORT THEIR CLAIM.**

34. NALA/PCA also alleges that SWBT has serious billing problems in Missouri.<sup>38</sup> Although NALA/PCA fail to provide any statistical evidence of these supposed billing problems, the performance measurement results included in Attachment B refute this allegation. SWBT has not failed any of the three submeasures (i.e., CRIS Usage, CABS Usage, and CRIS Bill

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<sup>36</sup> El Paso/PacWest also states that CLECs are experiencing difficulties in ascertaining the status of their orders. *Id.* at 17. In support of this claim, El Paso/PacWest relies on a portion of my previous testimony about PM 5-18 (Percent Firm Order Confirmations (FOCs) Returned On Time For LSR Requests - UNE Loops (1-49 Loops)). Initial Dysart Affidavit ¶ 49. However, El Paso/PacWest neglects to point out that SWBT's performance achieved parity during March, and further neglects to acknowledge the high overall percent of FOCs returned for all products, as was noted in my earlier affidavit. I reiterate my opinion (stated in my earlier affidavit) that there is no systemic problem associated with SWBT's performance for this measurement.

<sup>37</sup> Initial Dysart Affidavit ¶ 84. PM 1.2 assumes that the CLEC has requested a loop qualification and that the loop qualification returned indicated that no conditioning was required. The numerator counts the number of supplements that were issued to provide conditioning after the initial order, while the denominator counts the number of DSL orders. Late in 2000, SWBT offered to all CLECs, including ASI, the ability to participate in the "yellow zone trial." This process was developed in an effort to expedite the ordering process. Since the majority of lines in the "yellow zone" did not require conditioning, SWBT offered a process where the CLEC could order DSL within the "yellow zone" on an "as is" basis. In effect, the CLEC would not be required to request a loop qualification and could merely submit an order. If it was found that conditioning was required the order would be completed and a trouble ticket would be issued to add the conditioning. Therefore, for those CLECs participating in the "yellow zone trial" PM 1.2 would reflect 100% performance. ASI, the parity comparison for this measurement, chose to participate. Until all CLECs avail themselves of the "yellow zone trial" like ASI, PM 1.2 will falsely indicate that the CLECs are receiving a less accurate level of loop makeup information. CLECs' decisions whether to participate in the "yellow zone trial," like decisions whether to participate in acceptance testing, are matters over which SWBT has no control. For further detail on the "yellow zone trial," see *Initial Chapman Affidavit* ¶¶ 43-47.

<sup>38</sup> NALA/PCA Comments at 10-11.

audits) reported for PM 14 (Billing Accuracy) during any of the last twelve months. In addition, SWBT has posted perfect performance for PM 16 (Percent of Billing Records Transmitted Correctly) and near-perfect performance (98.4%) for PM 19 (Daily Usage Feed Timeliness) during the last twelve months. Consequently, claims by NALA/PCA of poor billing accuracy by SWBT are not supported by available performance data.

**AT&T RAISES NO MATERIAL ISSUES REGARDING SWBT'S PM 13 PERFORMANCE DATA RELIABILITY.**

35. AT&T discusses at length SWBT's implementation of PM 13 (Flow Through).<sup>39</sup> AT&T's discussion is clearly intended to lead the Commission to conclude that SWBT's implementation of this measurement was incorrect, and that the Texas PUC reached the same conclusion at its recent six-month performance measurements review proceedings. Neither conclusion is correct. Rather, the single issue here is whether SWBT properly interpreted the business rules associated with PM 13, i.e., whether SWBT correctly implemented the measurement. While one member of the Texas PUC's staff expressed a view on that issue, the Texas PUC itself has not reached any conclusion. A decision is expected following the Texas PUC's May 24, 2001 Open Meeting.

36. The Business Rule for PM 13 requires SWBT to use, as the denominator, "MOG eligible orders and orders that would flow through EASE." SWBT has interpreted this rule to require an "EASE-like" comparison for resale and UNE/UNE-P orders submitted through LEX and EDI. With respect to resale orders, SWBT includes within the denominator data for PM 13

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<sup>39</sup> Willard Declaration ¶¶ 30-43. The same issue is also raised by El Paso/PacWest (although to my recollection, this company was not present at the recent Texas PUC six-month performance measurements review when the matter of SWBT's implementation of PM 13 was discussed). The same explanation above applies to these assertions by El Paso/PacWest. See El Paso/PacWest Comments at 16-17.

all resale requests submitted via LEX or EDI, even though they are not LEX or EDI flow through eligible, so long as such requests can flow through in EASE. With respect to UNE/UNE-P orders, SWBT includes within the denominator all orders that are MOG eligible.<sup>40</sup> Therefore, PM 13 compares EASE performance for SWBT retail to the number of resale and MOG eligible orders submitted via LEX or EDI that flow through against the number of resale orders that would have flowed through EASE had they been submitted through EASE, and MOG eligible UNE/UNE-P orders.

37. As requested during the six-month review proceedings held on April 4 and 5, SWBT agreed to identify the UNE/UNE-P order types that were not included in the denominator of PM 13. Because they are not MOG eligible, Suspend/Restore and Rearranges to Hunt Groups for UNE-P have not been included in the denominator for PM 13. Furthermore, in December 2000, SWBT learned that Record orders and Outside Move orders were being included within the denominator despite the fact that neither of these types of orders is MOG eligible. In January 2001, SWBT began excluding data for both types of orders from the data reported for PM 13. Also, SWBT learned after the six-month review that it had been inadvertently excluding Suspend and Restore resale orders, which would flow through EASE, from the resale measurements for PM 13.

38. Essentially, there is a difference of opinion between SWBT and the CLECs on the meaning of the Business Rule for PM 13. SWBT's interpretation of PM 13's references to

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<sup>40</sup> UNE-P is defined as a combination of UNEs. EASE is an OSS interface for resale only, and does not support UNE or UNE-P orders/activity types. Therefore, there are no UNE or UNE-P orders that would flow through EASE and, as a result, only MOG-eligible UNE and UNE-P order/activity types are included in the denominator for the PM 13 measurements that report UNE and UNE-P flow through.

“MOG eligible orders” is reasonable. SWBT’s performance measurements are intended to capture SWBT’s performance in the market place as well as the impact on the end user. SWBT has worked diligently to provide flow through capabilities for those UNEs that CLECs generally demand, i.e., those capabilities that impact the CLEC market. Order/Activity types such as Conversion, New, Disconnects, and Changes do impact the CLECs. Thus, they are designed to flow through. As the competitive market matures and changes, SWBT recognizes that additional flow through Order/Activity types could be implemented in the future. In fact, the CLEC may request that additions to flow through capabilities be prioritized through the change management process.

39. For the same reasons, the order types currently not included in PM 13 need to be put into perspective. The primary order types not included in the PM calculations are Suspend and Restore orders. These orders temporarily suspend the customer’s service at the CLEC’s request (for example, due to the end users’ failure to pay the CLEC or the use of vacation service) and then restore service (for example, once payment or payment arrangements have been made with the CLEC). Record orders and Outside Move orders have to do with changes in directory listings and moves of customers from one location to another. (Certainly the exclusion of these types of orders did not prejudice AT&T’s opportunity to compete in Missouri, and AT&T does not claim, much less prove, otherwise.)

40. SWBT, however, has recalculated PM 13 results for the period from September 2000 through March 2001, by including data for the five<sup>41</sup> order types, which previously had not been

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<sup>41</sup> The five order types excluded were Suspend, Restore, Outside Moves, Records, and changes to Hunt Groups.



included for UNE-P, as well as Suspend and Restore orders, which had inadvertently been excluded from resale.<sup>42</sup>

41. The results below include activity for all the order types discussed above. These results clearly indicate that there is no significant difference in Missouri flow though performance results for EDI and only a minor difference in flow through performance results for LEX.

LEX	As Reported	Including Additional Order Types	Difference
September 2000	84.7%	83.5%	(1.2)
October 2000	73.5%	73.0%	(0.5)
November 2000	80.9%	79.9%	(1.0)
December 2000	81.2%	78.9%	(2.3)
January 2001	70.7%	68.0%	(2.7)
February 2001	84.6%	79.5%	(5.1)
March 2001	91.5%	87.1%	(4.4)

EDI	As Reported	Including Additional Order Types	Difference
September 2000	97.8%	98.1%	0.3
October 2000	91.2%	92.3%	1.1
November 2000	92.1%	92.4%	0.3
December 2000	94.9%	95.9%	1.0
January 2001	97.4%	97.7%	0.3
February 2001	94.9%	94.8%	(0.1)
March 2001	92.6%	92.6%	0

<sup>42</sup> The rerun of data indicates that there were only 18 orders for LEX during this period (September 2000 through March 2001) and only 2 for EDI for Suspend and Restore orders for resale. In addition, SWBT also excluded two error types that had erroneously been included, SD2112 and SD2029. A SD2112 order type occurs when the CLEC enters a Desired Frame Due Time ("DFDT") that is not between 8 a.m. and 5 p.m. These require manual intervention because coordination is required for DFDT orders to be worked outside of normal working hours. Therefore, this type of order is not flow through eligible. A SD2029 order type occurs when the Effective Bill Date ("EBD") is populated on the local service request ("LSR"). These LSRs likewise require manual intervention to enable the service representative to verify if the EBD date populated is allowable. If SWBT were to allow it to flow through without validation, billing could be adversely impacted.

42. As can be seen above, even taking into consideration what SWBT believes to be an incorrect interpretation of the business rule, the recalculated flow through performance for the EDI interface is still at a very high (indeed, improved) level, with only a negligible decrease in February 2001 (by 0.1%). Flow through performance for LEX showed significant improvement in March 2001. In view of this data, and the reasonableness of SWBT's interpretation of the Business Rule, as written, it is clear that SWBT acted appropriately in implementing the measurement.

43. In addition, AT&T suggests that SWBT miscalculated its own flow through rates in EASE.<sup>43</sup> The evidence that AT&T presented was an accusation by Birch Telecom that Record orders and Outside Move orders did not flow through EASE. SWBT has since investigated and indeed found that Record orders and Outside Move orders for SWBT retail customers do flow through EASE. Therefore, SWBT has not understated its own flow through rates as AT&T claims by inappropriately including orders in the denominator that do not flow through EASE.

**THE MISSOURI PERFORMANCE REMEDY PLAN OFFERS  
AMPLE PROTECTION AGAINST POTENTIAL BACKSLIDING.**

44. McLeodUSA asserts that the Performance Remedy Plan contained in the M2A is “woefully insufficient to protect against backsliding” and “does not employ appropriate statistical methodology.”<sup>44</sup> These claims have no merit. As I explained in detail in my earlier affidavit, the performance remedy plan in the M2A is in every material respect the same plan

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<sup>43</sup> Willard Declaration ¶ 40.

<sup>44</sup> McLeodUSA Comments at 40-54.

approved by this Commission in its previous orders granting SWBT 271 authority in Texas, Kansas and Oklahoma (while taking into account certain state-specific differences).<sup>45</sup> McLeodUSA presents no considerations that are new or different from those that the FCC encountered in its reviews undertaken in these prior proceedings.

**THE M2A PERFORMANCE REMEDY PLAN IS IN EVERY MATERIAL RESPECT THE SAME AS THE PERFORMANCE REMEDY PLANS ALREADY APPROVED BY THE FCC IN TEXAS, KANSAS, AND OKLAHOMA.**

45. The actual dollar amount of the financial cap used in the M2A differs from the limits set in the Texas, Kansas and Oklahoma performance remedy plans. However, the amount of the cap was determined using the same “36% of net return” methodology used by this Commission in its very first section 271 authorization order and since replicated in two additional orders.<sup>46</sup> As such, the annual cap approved by the MPSC is clearly adequate.

46. Even though McLeodUSA contends that this cap should be raised to 44% (\$154 million), this commenter provides no proof of the necessity of a higher cap, nor does it explain what considerations in Missouri require a departure from the Commission’s prior orders.<sup>47</sup> While McLeodUSA cites the penalties imposed on Bell Atlantic following its entry into the New York long distance market, this circumstance has nothing to do with SWBT. In short, McLeodUSA’s remedy plan criticisms are no more informed than its performance-related criticisms.

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<sup>45</sup> *SBC Texas Order* ¶¶ 420-429; *SBC Kansas/Oklahoma Order* ¶¶ 270-279; see Initial Dysart Affidavit ¶¶ 18-30, 158-177.

<sup>46</sup> *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 436 & n. 1332 (1999) (“*Bell Atlantic New York Order*”); *SBC Texas Order* ¶ 424 & n. 1235; *SBC Kansas/Oklahoma Order* ¶ 274 & n. 837.

<sup>47</sup> McLeodUSA Comments at 41.

**THE ANALYSIS OF THE PERFORMANCE REMEDY PLAN BY MCLEODUSA IS FLAWED.**

47. McLeodUSA uses an example to support several of its assertions.<sup>48</sup> Besides being flawed, this example also omits many aspects of the M2A that address the defects alleged by McLeodUSA.

**The Statistical Methodology Used in the Performance Remedy Plan Is Appropriate.**

48. The M2A Performance Remedy Plan is designed to compensate the CLECs for performance that is statistically “too different” from either the performance for an analogous retail service or an established benchmark. The plan sufficiently identifies those occurrences where the CLEC receives inferior service. In the situation in which the measure is an average, SWBT agrees with McLeodUSA – but for different reasons – that the compensation paid to the CLEC is “mathematically inconsistent and flawed.”<sup>49</sup> In fact, the Performance Remedy Plan over-compensates the CLEC in this circumstance. In virtually every case the CLEC is awarded damages on a far higher percentage of occurrences than actually occurred because of poor service.

49. For example, suppose that SWBT had provisioned ten units for the CLEC and the means are the same as stated in the McLeodUSA example: SWBT’s mean is 1.5, the CLEC’s mean is 3.0, and the benchmark is 2.0. Moreover, assume that nine installations occur in one day while one installation takes 21 days. In this example, the mean would still be 3.0, but SWBT would pay damages based on five transactions, not just the one that caused the parity failure.

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<sup>48</sup> *Id.* at 43.

<sup>49</sup> *Id.*

50. McLeodUSA fails to point out that telephony data is usually highly skewed in that multiple data points may be far removed from the average of the data as a whole. Under these conditions, a few occurrences can have a significant effect on the average of the data. The performance remedy plan's method of counting occurrences results in the CLEC being compensated on an inflated number of occurrences. As such, a cap is quite appropriate since this limits payments to only the total number of occurrences for a measure. Rather than being "mathematically inconsistent and flawed," this methodology results in SWBT not paying for more occurrences than actually took place for a given measure.

**The Performance Remedy Plan Will Deter Anti-Competitive Behavior.**

51. McLeodUSA also alleges that potential anti-competitive behavior will not be prevented by the performance remedy plan since (1) some measures have their total monthly payments capped; (2) several important measures are classified as "low," so that smaller damage multipliers apply for payments; and (3) assessments for Tier 2 do not begin until SWBT has reported a performance failure for the CLECs in the aggregate during three consecutive months.<sup>50</sup> Once again, however, nowhere does this CLEC identify a single reason for its views that was not already fully considered in the FCC's prior orders. For this reason alone, McLeodUSA's point should be dismissed.

52. In any case, these claims (and the conclusion) are without merit. The vast majority of performance measurements have no limit on the amount of damages that could be potentially paid to the CLECs. Less than twenty of the current 119 Version 1.7 performance measures have

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<sup>50</sup> *Id.* at 42.

a limit on payments. The cap exists on those measurements that have extremely high volumes such as trunk blockage and flow through.

53. Moreover, the “high,” “medium,” and “low” classifications are the same as those that were submitted in connection with SWBT’s Kansas/Oklahoma 271 application.<sup>51</sup> To the extent that any classification differs from the original Texas 271 application, it is only because the Texas plan had been modified and those modifications were incorporated into the Kansas and Oklahoma plans,<sup>52</sup> as well as the Missouri plan.

54. The classification of the level of importance should be made based on the impact on the end user customer, not on which measurements would provide the highest level of damages. If in fact a CLEC feels that the classification associated with an individual measure is classified as being of too little importance in the performance plan, it is free to bring evidence and argue its case at the six-month performance measurements reviews which are provided for in Attachment 17 of the M2A.<sup>53</sup> In fact, during the last six-month review, classifications for only a few measurements were even proposed to be changed by either party. Clearly the initial classification in most cases was appropriate or more changes would have been recommended.

55. In any case, the liquidated damages paid to CLECs are more than sufficient to compensate for any possible harm. For example, the individual payment associated with a late return of an address verification begins at \$25 per occurrence. Even though the effect of such a

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<sup>51</sup> See Dysart Affidavit, Attachment E, attached to *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217 (FCC filed Oct. 26, 2000).

<sup>52</sup> *SBC Kansas/Oklahoma Order* n. 833.

<sup>53</sup> M2A, Attachment 17, Section 6.4. Consideration of “whether to move a classification of a measure to High, Medium, Low, Diagnostic, Tier-1 or Tier-2” falls within the scope of the six-month review proceedings.

miss would likely be just a few seconds delay in order processing, the CLEC would receive a payment of at least \$25.

56. Furthermore, the penalty amounts in the M2A are designed to escalate with continued poor performance. If SWBT continues to return address verifications in a timely manner used in the example above, this \$25 payment per occurrence has the potential to reach \$400 for every miss outside the benchmark. Given the potential liability under the performance remedy plan and its availability to all CLECs who wish to enter in the M2A agreement with SWBT, it is inaccurate to claim that these penalty amounts are minimal.

57. Likewise, Tier 2 payments were designed to compensate the market for any “industry affecting and persistent” performance deficiencies. As was the case in both of SWBT’s Texas 271 and Kansas/Oklahoma 271 applications, assessments are paid to the state treasury when three consecutive monthly misses occur for an individual measurement. In this regard, every performance measure is tested each month to determine whether an assessment applies.

58. The FCC should rely on its prior orders to approve the Missouri Performance Remedy Plan. No commenter presents any reason in support of its position that was not previously argued to and fully considered by the FCC in its previous SWBT 271 proceedings.

**THE COMMISSION HAS AMPLE GROUNDS TO CONCLUDE THAT SWBT’S  
MISSOURI PERFORMANCE MEASUREMENT DATA AND PROCESSES ARE  
RELIABLE, NOTWITHSTANDING AT&T’S MISPLACED CRITICISMS OF ERNST &  
YOUNG’S AUDIT.**

59. In my initial affidavit, I explained that SWBT’s Missouri performance data could be relied on by the FCC, based in part upon the independent audit performed by Ernst & Young,

L.L.P. of SWBT's Missouri performance measurement systems and data.<sup>54</sup> Among the CLEC commenters that have raised performance data-related issues, only one – AT&T – argues that the FCC should not consider SWBT's performance data as reliable evidence of its performance.<sup>55</sup>

60. Stripped to the essentials, AT&T's argument regarding the reliability of SWBT's overall performance data rest on two criticisms, and both are lodged against E&Y's audit: first, that the claimed "errors in SWBT's reported performance data for flow-through (PM 13) and trouble report rates (PMs 35, 37 and 41) are, by themselves, sufficient to demonstrate the inadequacy of the Ernst & Young audit[;]"<sup>56</sup> and second, that "the Ernst & Young audit, and the final Ernst & Young reports on the audit, are fundamentally flawed."<sup>57</sup> Neither of these two criticisms has merit.

61. As a preliminary matter, it should not be overlooked that AT&T's criticisms regarding the accuracy of SWBT's performance data are very limited. AT&T's specific criticisms relating to two discrete areas are directed to but a small handful of the hundreds of measurements and submeasurements for which SWBT reported Missouri-specific data during March 2000.<sup>58</sup> In this regard, the FCC should draw from its *SBC Texas Order*, which rejected on two grounds the claims of "several" commenters challenging the validity of SWBT's

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<sup>54</sup> Initial Dysart Affidavit ¶¶ 178-186.

<sup>55</sup> AT&T Comments at 47. Furthermore, I am not aware that any Missouri CLEC has requested that the aggregate or CLEC-specific performance data made available to it be reconciled with the CLEC's own data.

<sup>56</sup> Willard Declaration ¶ 45; *see also* AT&T Comments at 51 ("The errors in SWBT's data belie its assertion that the recent 'audit' by Ernst & Young 'provides further support for the adequacy of SWBT's performance measurements, and for the reliability and accuracy of its reported data.'").

<sup>57</sup> AT&T Comments at 51, *citing* Willard Declaration ¶¶ 47-49; *see also* Willard Declaration ¶ 46 ("Even leaving aside these deficiencies, however, the Ernst & Young audit is plainly inadequate to establish the completeness, accuracy, and reliability of the SWBT performance data.").

<sup>58</sup> *See* Attachment A at 13; Attachment B. During March, SWBT provided information relative to 765 total measurements (including principal measurements and disaggregated submeasurements), 297 of which reflected a sample size of at least 10 data points, and 467 of which reflected a sample size of less than 10 data points.



performance data: first, that “the data submitted by SWBT in this proceeding have been subject to scrutiny and review by interested parties[;]” and second that “[t]o a large extent, moreover, the accuracy of the specific performance data relied upon by SWBT is not contested.”<sup>59</sup> AT&T’s few criticisms submitted in this proceeding warrant no greater consideration by the FCC than the CLECs’ criticisms submitted in the Texas 271 proceeding.

62. The matter of SWBT’s interpretation of PM 13 (Order Process Percent Flow Through) is discussed elsewhere in my affidavit, and in the separate affidavit of E&Y. Both discussions demonstrate that SWBT’s interpretation of the express language of the PM 13 business rules is certainly reasonable (and correct, in my view).<sup>60</sup>

63. Notwithstanding AT&T’s suggestions, no conclusion has been reached by the Texas PUC as to whether SWBT’s interpretation is incorrect, and no five-state audit has been ordered.<sup>61</sup> When the Texas PUC reaches a final determination regarding whether SWBT properly interpreted PM 13’s business rules, SWBT will abide by that determination. In the meantime, SWBT’s reported PM 13 data remains accurate and reliable in my view. Moreover, as I note in this affidavit’s discussion of PM 13, AT&T does not challenge the accuracy of data that were in fact captured within PM 13’s results, AT&T does not demonstrate that performance data not captured within PM 13’s results are statistically significant, and AT&T does not demonstrate that SWBT’s interpretation of the business rule adversely affected either its or any other CLECs’ ability to compete in the Missouri local exchange market. For these reasons, AT&T’s criticisms

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<sup>59</sup> *SBC Texas Order* ¶ 57.

<sup>60</sup> As noted in E&Y’s affidavit, E&Y identified and disclosed SWBT’s interpretation of the business rules to the Missouri PSC’s staff and both concluded that SWBT’s interpretation was reasonable. E&Y Affidavit ¶ 10.

<sup>61</sup> AT&T Comments at 49.

of E&Y's audit work on the basis of alleged PM 13 implementation shortcomings should be dismissed.

64. The matter of the adequacy of SWBT's LMOS database records and the consequent data reported by SWBT's performance measurements regarding trouble report rates (PMs 35, 37, and 41) is discussed in the joint reply affidavit of Daniel J. Coleman, William R. Dysart, Elizabeth A. Ham, Brian D. Noland, David Ross Smith, and Thomas E. Weisz. As is explained in more detail in that affidavit, the effect of SWBT's not having been able to fully capture all performance data intended to be captured by the pertinent installation quality and maintenance and repair performance measures is very slight. The posting "error" at issue potentially affected only about 10% of the CLEC community served by SWBT on a UNE-P basis. Finally, even as to this reduced number of CLECs, the actual affect on SWBT's performance for them is slight at best, given that SWBT's trouble report rate is typically about 2% (Attachment B, PMs 37-01 through 37.1-03).

65. AT&T's further suggestion that the LMOS-related errors somehow undermine the results of the E&Y audit is entirely inaccurate. As explained in the E&Y affidavit, it is not reasonable to conclude that E&Y should necessarily have been expected to detect these errors.

66. For these reasons, SWBT's implementation of the PM 13 business rules and the errors in the data encompassed by SWBT's trouble report-related measures, whether viewed individually or together, are of no consequence from a statistical standpoint, insofar as SWBT's reporting of data for the affected measurements is concerned. Even were it otherwise, those consequences still would not serve to undermine either the adequacy of E&Y's overall audit nor the accuracy and reliability of SWBT's overall performance measurement data.

67. Equally without any merit is AT&T's assertion that both the E&Y audit and E&Y's final reports on the audit are fundamentally flawed. In my initial affidavit I attached the various E&Y reports associated with the results of this audit.<sup>62</sup> AT&T's assertions do not alter either the correctness of the methodologies employed, or the conclusions reached in these reports, as demonstrated in the affidavit separately submitted by E&Y. Nowhere throughout the extensive audit process did SWBT or the Staff seek to limit the scope of testing deemed necessary by E&Y in their professional judgment to be able to render an independent opinion on SWBT's internal control environment and its compliance with applicable business rules/PM reporting requirements. AT&T's involvement in the audit planning and scope-setting process would not have produced anything tangible other than additional cost and time delays. Equally important is that AT&T remains contractually able to undertake an audit of any performance data reflecting SWBT's wholesale performance for AT&T. Yet, SWBT is not aware of a single instance in which a CLEC has availed itself of its own option to undertake an audit of SWBT's performance data at its own expense, as provided for in Attachment 17 of the approved Kansas, Oklahoma and Texas interconnection agreements (i.e., the K2A, O2A and T2A). The same opportunity is expressly provided in Attachment 17 of Missouri's approved M2A (at Section 6.6).

68. AT&T expresses disappointment that it was not provided access to the underlying E&Y workpapers.<sup>63</sup> Yet, prior to the Technical Conference of January 30, 2001, the MPSC

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<sup>62</sup> Initial Dysart Affidavit, Attachment Q (E&Y Compliance Report), Attachment R (E&Y Controls Report) and Attachment S (E&Y Scope, Approach & Methodology Report).

<sup>63</sup> Willard Declaration ¶ 49 & n. 39. It is curious that AT&T cannot conceive of a legitimate reason why it was denied access to the workpapers. I know of no publicly held corporation which would set its auditor's workpapers on the back table at the corporation's annual shareholder meeting. My understanding is that the auditor's professional standards, experience and judgment are relied upon in lieu of allowing third parties (much less competitors) their own peek at the underlying proprietary data. Also, it is significant that, in this instance, E&Y's workpapers were subject to review by the MPSC's Staff, which should further allay, if not eliminate, AT&T's concerns.

acted entirely appropriately when “[t]he Staff advised the parties [ ] that, because the workpapers of Ernst & Young, LLP contained information proprietary to Ernst & Young, LLP and/or Southwestern Bell Telephone Company, [the workpapers] would not be available for inspection by the parties.”<sup>64</sup> Contrary to AT&T’s assertion, SWBT explained in detail the reasons for which it would be wholly inappropriate to permit AT&T and other of SWBT’s competitors to review E&Y’s workpapers.<sup>65</sup> And, AT&T’s protests aside, E&Y provided “full and detailed responses to each of the questions posed” at the Technical Conference.<sup>66</sup> “In short, the Technical Conference confirmed that Ernst & Young left no stone unturned in reviewing SWBT’s OSS and performance measurements systems.”<sup>67</sup>

69. AT&T additionally claims that E&Y’s performance data validation is undermined by Telcordia Technologies (“Telcordia”) reports filed with the Texas PUC in December 2000.<sup>68</sup> AT&T is wrong. AT&T fails to mention that the very firm whose work it now elevates (i.e., Telcordia) has been the subject of AT&T’s steady and intense criticisms in the past – criticisms which continue even to this day.<sup>69</sup> Given this history, AT&T’s now touting Telcordia’s work to impeach E&Y’s work is suspect at best.

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<sup>64</sup> Initial Dysart Affidavit, Attachment U at 2, *citing* Staff’s Report on Results of Ernst & Young Technical Conference (Feb. 13, 2001).

<sup>65</sup> Initial Dysart Affidavit, Attachment T n. 1, *citing* Southwestern Bell Telephone Company’s Report Regarding the Ernst & Young Performance Measurements Technical Conference (Feb. 13, 2001).

<sup>66</sup> Initial Dysart Affidavit, Attachment U at 2, *citing* Staff’s Report on Results of Ernst & Young Technical Conference (Feb. 13, 2001).

<sup>67</sup> Initial Dysart Affidavit, Attachment T at 10-11, *citing* Southwestern Bell Telephone Company’s Report Regarding the Ernst & Young Performance Measurements Technical Conference (Feb. 13, 2001).

<sup>68</sup> Willard Declaration ¶ 54.

<sup>69</sup> Willard Declaration n. 32 (criticizing Telcordia’s work in connection with SWBT’s Texas 271 application).

70. In any event, AT&T has previously brought the same criticisms to the attention of the Missouri PSC, and SWBT met each and every one of them in extensive point-by-point comments filed with the MPSC on December 29, 2000.<sup>70</sup> AT&T fails to point out any reason why SWBT's analysis should be regarded as faulty or otherwise insufficient (indeed, it fails even to acknowledge SWBT's responsive comments). Consequently, there is no basis on which to conclude that the MPSC committed any error in declining to reopen the matter of E&Y's methodologies or procedures.

71. AT&T also asserts that "SWBT's reliance on the September 1999 Telcordia audit as evidence of the reliability of its reported data is equally misplaced."<sup>71</sup> However, AT&T mischaracterizes what my previous affidavit actually stated. In the passages cited by AT&T, I stated that "SWBT's performance data are entitled to the same 'significant weight' that the FCC gave to SWBT's Kansas, Oklahoma and Texas data" because "the systems and processes used by SWBT to generate Missouri performance data are the same as those utilized in Kansas, Oklahoma and Texas and found sufficient by the FCC."<sup>72</sup> These statements merely suggest, as I stated in my affidavit, that the FCC "is entitled to rely upon its own prior orders" to conclude that Missouri's performance data are reliable.<sup>73</sup> The Commission need not revisit all of the

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<sup>70</sup> *Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996*; *Southwestern Bell Telephone Company's Response to AT&T Communications of the Southwest, Inc.'s Motion to Submit Comments*, *Southwestern Bell Telephone Company's Response to AT&T Communications of the Southwest, Inc.'s Motion to Submit Comments*, Attachment A, Case No. TO-99-227 (filed Dec. 29, 2000); Attachment D.

<sup>71</sup> AT&T Comments n. 44; *see also* Willard Declaration n. 32 ("SWBT asserts that, even absent the Ernst & Young audit, the Commission could rely on the Telcordia review of SWBT's performance measures in Texas – which SWBT cited in its previous applications for Section 271 authority in Texas, Oklahoma and Texas – to conclude that SWBT's Missouri performance data are valid.").

<sup>72</sup> Initial Dysart Affidavit ¶ 178.

<sup>73</sup> Initial Dysart Affidavit n. 71.

reasons why it reached its correct conclusion in these prior proceedings' orders, nor does AT&T now present any new reason why the Commission should do so.

72. In conclusion, SWBT's Missouri performance measurement data should be regarded as reliable for multiple reasons. Although AT&T argues otherwise, it offers no legitimate support for its argument. The FCC can surely take note that this single CLEC quarrels with the results for only a very small portion of the entire universe of SWBT's overall performance data. In addition, the CLEC's criticisms regarding even this limited data are far overstated. Just as importantly, the FCC can rely upon its own prior orders regarding the sufficiency and reliability of SWBT's performance data. The Commission has now reviewed and approved applications for three other of SWBT's states (Texas, Kansas, and Oklahoma), and SWBT uses the same data collection, data processing, and data reporting procedures and systems in Missouri as it uses in those states. Thus, there should be no dispute that SWBT's performance measurement data can be relied upon by the FCC, the various state commissions, and the CLECs.

73. Finally, the FCC should reject all of AT&T's criticisms of E&Y's audit work and conclusions. This audit was conducted by an independent, international firm of certified public accountants having significant prior experience involving SWBT's systems and procedures as well as broad exposure to SWBT's performance measurements reporting systems by virtue of its work related to the FCC's Ameritech Merger Compliance Conditions. In all respects, E&Y's audit was properly planned and executed, and the conclusions reached were accurate and fairly stated. Claims by a single CLEC that the audit did not go far enough, reached the wrong conclusions, or denied it access to supporting workpapers have no merit.

## **CONCLUSION**

74. The FCC has ample grounds to conclude that SWBT's Missouri Performance Measurements and Remedies Plan is sufficient to ensure SWBT's post-entry checklist compliance with section 271 of the Act. The CLECs' comments relating to SWBT's performance generally rely on data at least six months old and do not alter the fact that SWBT continues to provide Missouri CLECs a meaningful opportunity to compete in the Missouri local exchange market. Nor do AT&T's criticisms of the data for a limited number of measurements undermine the reliability of SWBT's performance data. As to remedies, SWBT's Missouri Remedy Plan virtually mirrors plans currently employed in Kansas, Oklahoma and Texas, which the FCC previously deemed sufficient to provide a strong incentive for SWBT to maintain checklist compliance on a post-entry basis. Those CLECs' who seek to change certain aspects the Missouri Remedy Plan do not present any reasons in support that were not previously brought to and fully considered by the Commission in SWBT's prior section 271 applications.

75. This concludes my affidavit.

I hereby swear and affirm that the information contained in the attached affidavit is true and correct to the best of my knowledge and belief.

William R. Dysart

William R. Dysart

Director – Performance Measurements

Subscribed and sworn to before me on this 14 day of May 2001.

Kathleen Enger  
Notary Public

